

COURT OF APPEALS OF OREGON

Windlinx Ranch Trust v. Deschutes County

346 Or. App. 435 (2026) · No. A187019 · Decided January 7, 2026

SUMMARY

The Oregon Court of Appeals awarded Hodge Kerr and Debora Kerr \$30,970.50 in attorney fees for defending a LUBA decision on judicial review. The court held that Windlinx Ranch Trust pursued its judicial-review position without probable cause under ORS 197.830(15)(b), and that ORS 19.440 authorized an award of fees for the judicial-review proceeding. The court concluded that the requested fee amount was reasonable.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Joyce, J.; Egan, Presiding Judge; Lagesen, Chief Judge; Joyce, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	January 7, 2026
DOCKET	A187019
DISPOSITION	other
PROCEDURAL POSTURE	Respondents Hodge Kerr and Debora Kerr petitioned the Oregon Court of Appeals for attorney fees incurred in defending the Land Use Board of Appeals decision on judicial review.
STANDARD OF REVIEW	The court determined in the first instance whether Windlinx's position in the judicial review proceeding lacked probable cause; the fee entitlement determination was based on whether the position was devoid of merit in its entirety and not open to rational, reasonable, or honest discussion.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Windlinx Ranch Trust v. Deschutes County, Hodge Kerr, Debora Kerr

TOPICS

- judicial review of agency action
- administrative law
- remedies
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether ORS 197.830(15)(b), applied to judicial review through ORS 19.440, authorized an award of attorney fees to the prevailing respondents.
2. Whether Windlinx presented its position in the judicial review proceeding without probable cause to believe that the position was well-founded in law or fact.
3. Whether the Kerrs' requested attorney-fee amount of \$30,970.50 was reasonable.

HOLDINGS

1. ORS 197.830(15)(b), which authorizes fees in LUBA proceedings when a party presents a position without probable cause, applies to attorney fees incurred in judicial review proceedings through ORS 19.440.
2. Windlinx's position in the judicial review proceeding lacked probable cause because it challenged the application of a clearly established waiver rule in circumstances where no open issue or reasonable debate existed.
3. The court awarded the Kerrs the requested \$30,970.50 in attorney fees for their work on judicial review.

KEY QUOTATIONS

*“A position lacks probable cause when it is “devoid of merit in its entirety,” which is, said another way, when the position is not “open to doubt, or * * * debatable, or over which rational, reasonable or honest discussion may arise.”” (437)*

“Our role at this point, rather than exercising our review function to decide whether LUBA erred in determining that petitioner’s position before LUBA lacked probable cause, is to decide, in the first instance, whether petitioner’s position as presented in the judicial review proceeding lacked probable cause.” (438)

“Because petitioner’s position on judicial review lacked probable cause, it is appropriate to grant the Kerrs’ petition for attorney fees under ORS 197.830(15)(b) and ORS 19.440.” (439)

FACTUAL BACKGROUND

Windlinx challenged LUBA's nearly \$50,000 attorney-fee award to Hodge and Debora Kerr. The underlying dispute concerned whether Windlinx had waived an issue by failing to raise it at the earliest opportunity in successive land-use proceedings. The Court of Appeals had previously agreed with LUBA that the waiver rule clearly barred Windlinx's position and affirmed the fee award. In the present fee proceeding, the court concluded that Windlinx's continued challenge to the waiver ruling likewise lacked probable cause.

PROCEDURAL HISTORY

LUBA awarded the Kerrs nearly \$50,000 in attorney fees under ORS 197.850(15)(b). Windlinx sought judicial review of that award, but the Court of Appeals affirmed LUBA's decision in a nonprecedential memorandum

opinion. The Kerrs then petitioned for attorney fees incurred in the judicial review proceeding under ORS 197.830(15)(b) and ORS 19.440(1).

DISPOSITION

other

CASES CITED

- Windlinx Ranch Trust v. Deschutes County, 341 Or. App. 619 (2025) (nonprecedential memorandum opinion)
- Fechtig v. City of Albany, 150 Or. App. 10, 14, 27, 946 P.2d 280 (1997)
- Phillips v. Polk County, 344 Or. App. 711, ____ P.3d ____ (2025)

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